



Senate

General Assembly

File No. 322

February Session, 2014

Substitute Senate Bill No. 299

Senate, April 3, 2014

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HEATING FUEL DELIVERY FEES, CHARGES AND SURCHARGES AND PREPAID GUARANTEED HEATING FUEL PRICE PLANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 16a-21 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2014*):

4 (g) No heating fuel dealer shall assess a fee, charge or surcharge on
5 the price per gallon or total delivery charge for any heating fuel
6 delivery initiated by a consumer, except when:

7 (1) The heating fuel delivery is [not more] less than one hundred
8 gallons;

9 (2) The heating fuel delivery is made outside the normal service area
10 of the dealer;

11 (3) The heating fuel delivery is made outside the normal business

12 hours of the dealer; or

13 (4) The dealer incurs extraordinary labor costs for the heating fuel
14 delivery.

15 Sec. 2. Section 16a-23m of the general statutes is repealed and the
16 following is substituted in lieu thereof (*Effective July 1, 2014*):

17 (a) As used in this section, [and] sections 16a-23n to [16a-23r,] 16a-
18 23s, inclusive, as amended by this act, and section 7 of this act:

19 (1) "Capped price plan" means an agreement where the cost to the
20 consumer of heating fuel shall not increase above a specified price per
21 gallon and the consumer shall pay less than the specified price under
22 circumstances specified in such contract;

23 (2) "Commissioner" means the Commissioner of Consumer
24 Protection;

25 (3) "Consumer" means a direct purchaser of heating fuel from a
26 heating fuel dealer, when such fuel is the primary source of heating
27 fuel for residential heating or domestic hot water to one or more
28 dwelling units within a structure having not more than four dwelling
29 units;

30 (4) "Forwards contract" means an agreement between two parties to
31 buy or sell an asset at a certain future time for a certain price;

32 (5) "Futures contract" means a standardized, transferable, exchange-
33 traded agreement that requires delivery of heating fuel at a specified
34 price on a specified future date;

35 (6) "Gallon" means an accepted unit of measure consisting of two
36 hundred thirty-one cubic inches, for all liquid or gaseous heating fuel,
37 subject to modifications allowed under regulations adopted pursuant
38 to section 43-42;

39 (7) "Guaranteed price plan", also known as "guaranteed plan", "fixed
40 price", ["buy ahead", "prebuy", "prebought", "prepaid",] "full price",

41 "lock in", "capped", "price cap", or other similar terminology, when
42 used to describe a contract, means a type of contract that is not paid in
43 advance of delivery, offering heating fuel at a guaranteed future price
44 or at a maximum future price;

45 (8) "Heating fuel" means any petroleum-based fuel used as a
46 primary source of residential heating or domestic hot water, including
47 petroleum products regulated pursuant to chapter 250;

48 (9) "Heating fuel dealer" or "dealer" means any individual or group
49 of individuals, or a firm, partnership, corporation, cooperative or
50 limited liability company that offers the retail sale of heating fuel to
51 consumers;

52 (10) "Heating oil" means a predominantly liquefied petroleum
53 product at ambient temperatures, that is sold as a commodity and is a
54 primary source of residential heating or domestic hot water, including
55 products known as #2 oil (heating oil), #1 oil (kerosene), #4 oil, bio
56 fuels, or any bio fuel blended with conventionally refined fossil fuel
57 commodities and that meets the requirements of the American Society
58 for Testing and Materials Standard D396, as amended from time to
59 time;

60 (11) "Maintain" means retention of the balance, measured in gallons
61 or other accepted units of measure, of heating fuel that remains to be
62 delivered to consumers who are party to a guaranteed price plan
63 contract;

64 (12) "Physical supply contract" means an agreement for wet barrels
65 or gallons of heating fuel that has been secured by a heating fuel
66 dealer;

67 (13) "Prepaid guaranteed price plan", also known as "buy ahead",
68 "prebuy", "prebought", or other similar terminology, when used to
69 describe a contract, means a type of contract offering heating fuel at a
70 guaranteed price, paid for in advance of delivery;

71 [(13)] (14) "Propane" or "liquefied petroleum gas (LPG)" means a

72 petroleum product that meets ASTM specification D1835, as amended
73 from time to time, and is composed predominantly of any of the
74 following hydrocarbons or mixtures thereof: Propane, propylene,
75 butanes (normal butane or isobutane), and butylenes and is intended
76 for use, among other things, as a fuel for residential heating; and

77 [(14)] (15) "Surety bond" means a bond issued by a licensed
78 insurance company or banking institution as surety for a dealer
79 obligating the surety to the commissioner in a sum certain in guaranty
80 of the full and faithful performance by the dealer of prepaid
81 guaranteed price plan contracts entered into pursuant to this chapter.

82 (b) No heating fuel dealer shall engage in the sale of heating fuel
83 without a certificate of registration as a heating fuel dealer issued
84 pursuant to this section. No federally established heating assistance
85 agency shall be required to register. Only one registration shall be
86 required of a dealer to engage in both the retail sale of heating oil and
87 propane. A separate certificate of registration is required for each name
88 that a heating fuel dealer does business as or advertises.

89 (c) Each person, firm or corporation seeking registration as a heating
90 fuel dealer shall apply annually for a certificate of registration with the
91 Department of Consumer Protection on forms prescribed by the
92 commissioner. Each heating fuel dealer shall disclose on such forms all
93 affiliated companies registered with the department that are under
94 common ownership or have interlocking boards of directors. Each
95 applicant shall pay a registration fee of two hundred dollars. The
96 commissioner shall require all applicants for registration as a heating
97 fuel dealer to provide evidence of general liability insurance coverage
98 and insurance to cover any potential environmental damage due to
99 heating fuel spills or leaks caused by such applicant as a registered
100 dealer which coverage shall be not less than one million dollars. Each
101 registered dealer shall provide the department with evidence of each
102 renewal of or change to such insurance coverage not later than five
103 days after such renewal or change during the period of registration,
104 which renewal or change shall meet the requirements of this

105 subsection.

106 (d) Each registered dealer shall display its registration number in all
107 advertisements and other materials prepared or issued by the dealer,
108 which contain information regarding such dealer, including, but not
109 limited to, all contracts, delivery tickets, letters and vehicle
110 advertisements.

111 (e) The insurance company of a heating fuel dealer shall notify the
112 commissioner, in writing, upon cancellation of insurance required by
113 subsection (c) of this section by any heating fuel dealer. The
114 commissioner shall revoke the registration of any such dealer without
115 the insurance coverage required by subsection (c) of this section.

116 (f) Prior to offering a prepaid guaranteed price plan to a consumer, a
117 dealer shall disclose the details of such offering, including such
118 dealer's method of compliance with section 16a-23n, as amended by
119 this act, on a form prescribed by the commissioner.

120 Sec. 3. Section 16a-23n of the general statutes is repealed and the
121 following is substituted in lieu thereof (*Effective July 1, 2014*):

122 (a) A contract for the retail sale of heating fuel that offers a
123 guaranteed price plan or a prepaid guaranteed price plan shall be in
124 writing. [and the] The terms and conditions of such guaranteed price
125 plan or prepaid guaranteed price plan shall be disclosed [. Such
126 disclosure shall be] in plain language and shall immediately follow the
127 language concerning the price or service that could be affected, if
128 applicable, and shall be printed in no less than twelve-point boldface
129 type of uniform font.

130 (b) A heating fuel dealer that advertises a price shall offer such price
131 for a period of no less than twenty-four hours or until the next
132 advertised price is publicized, whichever occurs first.

133 (c) Each capped price plan and any guaranteed price plan that
134 includes the terms "cap", "capped", "maximum", "not to exceed" or any
135 other similar term or description shall not increase above a specified

136 price per gallon. The contract for such plan or for a prepaid guaranteed
137 price plan shall contain clear and specific language stating how and
138 under what circumstances the price will decrease, if applicable.

139 (d) (1) A heating fuel dealer shall, not later than five business days
140 after entering into a prepaid guaranteed price plan contract, either:
141 [(1)] (A) Obtain heating fuel physical inventory to which such dealer
142 holds title, heating fuel futures or forwards contracts, physical supply
143 contracts or other similar commitments the total amount of which
144 allow such dealer to purchase, at a fixed price, heating fuel in an
145 amount not less than eighty per cent of the maximum number of
146 gallons or amount that such dealer is committed to deliver pursuant to
147 all prepaid guaranteed price contracts entered into by such dealer, or
148 [(2)] (B) obtain a surety bond in an amount not less than fifty per cent
149 of the total amount of funds paid to the dealer by consumers pursuant
150 to prepaid guaranteed price plan contracts.

151 (2) A heating fuel dealer shall, not later than five business days after
152 entering into a guaranteed price plan contract, [that is not prepaid,]
153 obtain heating fuel physical inventory to which such dealer holds title,
154 heating fuel futures or forwards contracts, physical supply contracts or
155 other similar commitments the total amount of which allow such
156 dealer to purchase, at a fixed price, heating fuel in an amount not less
157 than eighty per cent of the maximum number of gallons or amount
158 that such dealer is committed to deliver pursuant to all guaranteed
159 price plan contracts entered into by such dealer.

160 (3) Such dealer shall maintain such total amount of futures or
161 forwards or physical supply contracts or other similar commitments or
162 the amount of the surety bond required [by] under this subsection for
163 the period of time for which such guaranteed price plan contracts are
164 effective, except that the total amount of such futures or forwards or
165 guaranteed price plan contracts or other similar commitments or the
166 amount of the surety bond may be reduced during such period of time
167 to reflect any amount of heating fuel already delivered to and paid for
168 by the consumer.

169 (e) No guaranteed price plan contract or prepaid guaranteed price
170 plan contract shall require any consumer commitment to purchase
171 heating fuel pursuant to the terms of such contract for a period of more
172 than eighteen months. A guaranteed price plan contract or prepaid
173 guaranteed price plan contract for the purchase of heating fuel may
174 not contain an automatic contract renewal or extension clause.

175 (f) Any guaranteed price plan contract or prepaid guaranteed price
176 plan contract shall indicate, in clear and specific language: (1) The
177 amount of funds paid by the consumer to the heating fuel dealer under
178 such contract, (2) the maximum number of gallons of heating fuel
179 committed by the dealer for delivery to the consumer pursuant to such
180 contract, (3) that performance of such guaranteed price plan contract
181 or prepaid guaranteed price plan contract is secured by one of the
182 options described in subsection (d) of this section, and (4) if the price of
183 heating fuel is subject to fluctuation, the circumstances under which
184 the price may fluctuate. Any such contract shall provide that the
185 contract price of any undelivered heating fuel owed to the consumer
186 under the contract, on the end date of such contract, shall be
187 reimbursed to the consumer not later than thirty days after the end
188 date of such contract unless the parties to such contract agree
189 otherwise.

190 (g) Each heating fuel dealer who enters into guaranteed price plan
191 contracts or prepaid guaranteed price plan contracts shall inform the
192 Commissioner of Consumer Protection, in writing, that such dealer is
193 entering into such contracts and shall identify any entity from which
194 the dealer has secured heating fuel futures or forwards contracts,
195 physical supply contracts or other similar commitments or a surety
196 bond pursuant to subsection (d) of this section. Each such dealer shall
197 notify the commissioner if at any time the total amount of such secured
198 futures or forwards contracts, physical supply contracts or other such
199 similar commitments held by the dealer is less than eighty per cent of
200 the maximum number of gallons or amount that such dealer is
201 committed to deliver pursuant to all such contracts entered into by
202 such dealer or, if the total amount of such surety bond is not more than

203 fifty per cent of the remaining balance of funds consumers paid
204 pursuant to prepaid guaranteed price plan contracts. The
205 commissioner shall prescribe the form in which such information shall
206 be reported.

207 (h) Each person from which a heating fuel dealer has secured a
208 futures, forwards or physical supply contract or other similar
209 commitment or a surety bond pursuant to subsection (d) of this section
210 shall notify the Commissioner of Consumer Protection, in writing, of
211 the cancellation of such contract or other similar commitment or surety
212 bond not later than three business days after such cancellation.

213 Sec. 4. Section 16a-23p of the general statutes is repealed and the
214 following is substituted in lieu thereof (*Effective July 1, 2014*):

215 The Department of Consumer Protection may suspend or revoke
216 any registration issued under section 16a-23m, as amended by this act,
217 if the holder of such registration is grossly incompetent, engages in
218 malpractice or unethical conduct or knowingly makes false,
219 misleading or deceptive representations regarding such holder's work,
220 violates any provision of section 16a-23n, as amended by this act, or
221 section 7 of this act, fails to comply with any subpoena issued pursuant
222 to this section or violates any regulations adopted under section 16a-
223 23q. Before any such registration is suspended or revoked, such holder
224 shall be given notice and opportunity for hearing as provided in
225 regulations adopted by said commissioner in accordance with the
226 provisions of chapter 54. Said commissioner may compel by subpoena,
227 at his or her discretion, the production of any documents from any
228 heating fuel dealer or from any provider of futures or forwards
229 contracts, physical supply contracts or other similar commitments or a
230 surety bond, regarding compliance with the provisions of sections 16a-
231 23m to 16a-23r, inclusive, as amended by this act, or section 7 of this
232 act.

233 Sec. 5. Section 16a-23r of the general statutes is repealed and the
234 following is substituted in lieu thereof (*Effective July 1, 2014*):

235 (a) A violation of the provisions of section 16a-23m, as amended by
236 this act, 16a-23n, as amended by this act, [or] 16a-23o or section 7 of
237 this act constitutes an unfair trade practice under subsection (a) of
238 section 42-110b.

239 (b) In accordance with the provisions of section 53a-11, any heating
240 fuel dealer who knowingly violates the provisions of subsection (d) of
241 section 16a-23n, as amended by this act, shall have committed a class A
242 misdemeanor. The commissioner shall report such violation to the
243 office of the state's attorney for the judicial district in which such
244 violation occurred.

245 (c) Any person, firm or corporation who violates the provisions of
246 section 16a-23m, as amended by this act, 16a-23n, as amended by this
247 act, [or] 16a-23o or section 7 of this act shall be fined not more than five
248 hundred dollars for the first offense, not more than seven hundred
249 fifty dollars for a second offense occurring not more than three years
250 after a prior offense and not more than one thousand five hundred
251 dollars for a third or subsequent offense occurring not more than three
252 years after a prior offense.

253 Sec. 6. Section 16a-23s of the general statutes is repealed and the
254 following is substituted in lieu thereof (*Effective July 1, 2014*):

255 (a) The Department of Consumer Protection shall establish a list of
256 all [registered home heating oil and propane gas] heating fuel dealers.
257 The department shall make the list available to all wholesalers of
258 [home heating oil or propane gas] heating fuel doing business in the
259 state and such wholesalers shall only sell to the [registered home
260 heating oil or propane gas] heating fuel dealers on said list.

261 (b) The Department of Consumer Protection shall establish a list of
262 all heating fuel dealers that have disclosed offerings of prepaid
263 guaranteed price plans to consumers pursuant to subsection (c) of
264 section 16a-23m, as amended by this act. Such list shall be made
265 available to the public on the department's Internet web site.

266 Sec. 7. (NEW) (*Effective July 1, 2014*) (a) On and after July 1, 2014, no
 267 heating fuel dealer shall offer a prepaid guaranteed price plan to a
 268 consumer during the period beginning on November first and ending
 269 on March thirty-first. The provisions of this subsection shall not
 270 prohibit the delivery of heating fuel by a heating fuel dealer to a
 271 consumer during said period if the consumer entered into a prepaid
 272 guaranteed price plan contract with the heating fuel dealer to provide
 273 for the delivery of heating fuel during said period and such contract
 274 was entered into prior to July 1, 2014, or outside of said period.

275 (b) A heating fuel dealer shall, prior to entering into a prepaid
 276 guaranteed price plan contract with a consumer, provide the consumer
 277 with a conspicuous statement, printed in no less than twelve-point
 278 boldface type of uniform font, in substantially the following form:

279 "DISCLOSURE NOTICE CONCERNING CREDIT CARD
 280 PAYMENT OPTION. If you pay by credit card for a prepaid
 281 guaranteed heating fuel price plan contract, you may be entitled to
 282 recovery payments if heating fuel is not delivered to you in accordance
 283 with the contract."

284 Sec. 8. (NEW) (*Effective from passage*) Not later than June fifteenth
 285 each year, the Commissioner of Revenue Services shall notify the
 286 Department of Consumer Protection of any outstanding tax
 287 delinquencies owed to the state by any heating fuel dealer, as defined
 288 in section 16a-23m of the general statutes, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	16a-21(g)
Sec. 2	<i>July 1, 2014</i>	16a-23m
Sec. 3	<i>July 1, 2014</i>	16a-23n
Sec. 4	<i>July 1, 2014</i>	16a-23p
Sec. 5	<i>July 1, 2014</i>	16a-23r
Sec. 6	<i>July 1, 2014</i>	16a-23s
Sec. 7	<i>July 1, 2014</i>	New section
Sec. 8	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In section 2, "that is not paid in advance of delivery," was added to the definition of "Guaranteed price plan" for clarity.

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact to the state as the Department of Consumer Protection (DCP) has staff with the expertise to receive information from dealers concerning prepaid guaranteed price plan contracts as defined in the bill. Additionally, there is no fiscal impact to the Department of Revenue Services (DRS) in supplying the DCP with information on outstanding tax delinquencies of oil dealers as such information is readily available to DRS.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 299*****AN ACT CONCERNING HEATING FUEL DELIVERY FEES, CHARGES AND SURCHARGES AND PREPAID GUARANTEED HEATING FUEL PRICE PLANS.*****SUMMARY:**

This bill prohibits heating fuel dealers from offering prepaid heating fuel guaranteed price plan contracts (ones offering a guaranteed price paid in advance of delivery) to consumers between November 1 and March 31 of the next year.

It also requires dealers offering prepaid guaranteed price plan contracts to consumers to (1) disclose details of the offer before offering the contract, including how they will secure the contract, on a Department of Consumer Protection (DCP) prescribed form and (2) inform consumers that they may be entitled to recover credit card payments if the fuel is not delivered. DCP must establish, and make available on its website, a list of all heating fuel dealers that offer prepaid guaranteed price plans to consumers.

The bill (1) requires the Department of Revenue Services (DRS) commissioner to notify DCP, by June 15 annually, of any outstanding tax delinquencies a heating fuel dealer owes to the state; (2) lowers the minimum fuel oil delivery amount on which dealers may impose a surcharge; and (3) makes technical changes.

EFFECTIVE DATE: July 1, 2014, except for the DRS notification, which is effective on passage.

GUARANTEED PRICE PLANS

Current law defines a “guaranteed price plan” as a contract offering heating fuel at a guaranteed future price or a maximum future price,

irrespective of when payment is made. The bill differentiates “prepaid guaranteed price plan,” which is a contract paid for in advance of delivery, from “guaranteed price plan,” which is a contract not paid for in advance of delivery. In addition to the existing requirements governing guaranteed price plans, the bill imposes additional disclosure requirements on prepaid plans.

PREPAID PLANS

Prohibited Contracting Periods

The bill prohibits heating fuel dealers from offering prepaid heating fuel guaranteed price plan contracts to consumers between November 1 and March 31 of the next year. Dealers may deliver heating fuel during this period if the customer entered into a contract with the dealer to provide delivery during this period and the contract was entered before July 1, 2014 or outside the prohibited period.

Contract Security Disclosure

The bill requires heating fuel dealers, before offering a prepaid guaranteed price plan to consumers, to disclose the plan’s details on a DCP-prescribed form. The details must include the dealer’s method of securing the contract, as required by existing law (CGS § 16a-23n(d)). By law, such a contract must already indicate, in clear and specific language, that it is secured using one of the acceptable methods, among other things (CGS § 16a-23n(f)). Securing a contract means pledging an asset or property as collateral, which, in case of default, may be seized and sold to mitigate losses.

By law, dealers may secure prepaid guaranteed price plan contracts in one of two ways. The first is by obtaining heating fuel physical inventory to which the dealer holds title, futures or forwards contracts, physical supply contracts, or other similar commitments, the total amount of which allows the dealer to purchase, at a fixed price, at least 80% of the maximum number of gallons of fuel or amount that the dealer is committed to deliver under all of its guaranteed price contracts. The second is by obtaining a surety bond equal to at least 50% of the total amount paid by consumers.

Under the bill, the DCP commissioner must report any dealer who knowingly fails to secure the contract (including non-prepaid guaranteed contracts) to the state's attorney for the district where the violation occurs. By law, violators may be guilty of a class A misdemeanor, which is punishable by up to a \$2,000 fine, up to one years' imprisonment, or both.

Credit Card Recovery Disclosure

Under the bill, a heating fuel dealer must, before entering into a prepaid guaranteed price plan contract with a consumer, provide a conspicuous statement printed in at least 12-point boldface type of uniform font, in a form similar to: "DISCLOSURE NOTICE CONCERNING CREDIT CARD PAYMENT OPTION. If you pay by credit card for a prepaid guaranteed heating fuel price plan contract, you may be entitled to recovery payments if heating fuel is not delivered to you in accordance with the contract."

Penalties

The bill imposes penalties for offering a contract during the prohibited times and failing to make the required disclosures. Violators are deemed to have committed an unfair and deceptive trade practice and are subject to a maximum fines of (1) \$500 for a first offense, (2) \$750 for a second offense within three years of the prior offense, and (3) \$1,500 for subsequent offenses within three years of the prior offense.

These are the same as the penalties under existing law for home heating fuel and guaranteed price plan violations.

DELIVERY FEE OR SURCHARGE

Current law allows a dealer to impose a delivery fee, charge, or surcharge on heating fuel deliveries when the shipment contains 100 gallons or less. The bill reduces this amount to less than 100 gallons, thus prohibiting this fee on 100-gallon deliveries. A violation is deemed an unfair and deceptive trade practice.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violating a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 16 Nay 1 (03/18/2014)